



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-43/56826

PRELIMINARY RECITALS

Pursuant to a petition filed February 12, 2003, under Wis. Stat. § 49.45(5) (1999-00), to review a decision by Oneida County Department of Social Services (County) in regard to the Medical Assistance (MA), a hearing was held on March 25, 2003 in Rhinelander, Wisconsin.

The issue for determination is whether petitioner divested assets in December 2002 and is ineligible for MA as a result.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

(petitioner's son)

Wisconsin Department of Health and Family Services

Division of Health Care Financing

Room 250

1 West Wilson Street

P.O. Box 309

Madison, Wisconsin 53707-0309

By: Mary Jesse, ESS

Judy Zarm, ESS

Oneida County Department Of Social Services

1 Courthouse Square

P.O. Box 400

Rhinelander, Wisconsin 54501

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) was a resident of Oneida County; petitioner was born June 14, 1930 and died January 20, 2003; ["RS"] is petitioner's son. Exhibit #2.

2. Petitioner applied for institutional MA on January 24, 2003. Exhibit #2.
3. On December 9, 2003 petitioner transferred her 1/2 ownership of 1.3 acres of land to RS and received no payment in return for this transfer. Exhibit #2.
4. On December 9, 2003 petitioner transferred her 1/2 ownership of a mobile home to RS and received no payment in return for this transfer; the mobile home sits on the 1.3 acres of land that she had already transferred to RS on December 9, 2002. Exhibit #2.
5. Petitioner's 1/2 ownership of the land and the mobile home she transferred to RS in December 2002 is valued at \$25,100.00. Exhibit #2.

DISCUSSION

With certain exceptions, if an individual, or another person acting on behalf of the individual, transfers assets for less than Fair Market Value (FMV) on or after the individual's look-back date (such transfers are commonly known as “divestment”), the individual is ineligible for Institutional MA for a specified time period. 42 U.S.C. § 1396p(c)(1)(A) (Supp. 2000); Wis. Stat. § 49.453(2) (1999-00); Wis. Admin. Code § HFS 103.065(4)(a) (February 2002); MA Handbook, Appendix 14.2.0 et. seq.

Clearly, petitioner's transfer of her 1/2 ownership of the land and mobile home to RS in December 2002 was divestment.

There are certain exceptions where divestment will not result in ineligibility for Institutional MA. See, Wis. Stat. § 49.453(8) (1999-00); Wis. Admin. Code §§ HFS 103.065(4)(b), (cm) & (d) (February 2002); MA Handbook, Appendix 14.4.0. None of those exceptions has been shown to apply in this case. In particular, it is not claimed that RS is under age 21 or that he meets the Supplemental Security Income (SSI) definition of total and permanent disability or blindness. Wis. Admin. Code § HFS 103.065(4)(b)2. (February 2002); MA Handbook, Appendix 14.4.0.7.b. Alternatively, it has not been shown that the transfers in this case were made exclusively for some purpose other than to become eligible for MA -- in order to make such a showing it must be shown that it was expected that petitioner's institutional expenses would be covered by private health insurance or some source other than MA. Wis. Admin. Code §§ HFS 103.065(4)(d)2.b (February 2002); MA Handbook, Appendix 14.4.0.1. Finally, it has not been shown that the care RS provided to petitioner for the 2 years immediately before petitioner was institutionalized permitted petitioner to reside in her home rather than an institution -- in order to make such a showing a notarized statement must be provided from petitioner's physician or another person or persons with personal knowledge of the living circumstances (not from the child). Wis. Admin. Code §§ HFS 103.065(4)(b)4. (February 2002); MA Handbook, Appendix 14.4.0.7.d.

CONCLUSIONS OF LAW

For the reason discussed above, petitioner divested assets in December 2002 and is ineligible for MA as a result.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and same is hereby DISMISSED.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 25th day of
April, 2003

/sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals
421/SPM